IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.45 OF 2005

M/s. Jani Candies &
Toffees Pvt. Ltd.
& Ors. ....Petitioners.

V/s

M/s. Jyoti Toolings &
Press Components
Pvt. Ltd. ....Respondents.

Mr. Madhav Jamdar for the Petitioners.

Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.
DATE: 17th March, 2005

P.C.:

1. Heard the learned Counsel for the petitioners.

2. This is a Writ Petition for recall of process issued by the JMFC, Pimpri on the complaint filed by the Respondent No.1 - complainant under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel for the petitioners that there is delay in filing the complaint and, therefore, it is barred by limitation. It is submitted that the cheque was dishonoured on 26/8/2003. Thereafter, notice was sent on 22/9/2003. The complaint was filed on 10/11/2003. It is submitted that this complaint was clearly barred by

limitation. The complainant in its complaint has stated that the cause of action in the complaint first arose on 26/8/2003 when the intimation was received by the complainant about dishonour of cheque from its Bankers and, thereafter, 15 days after the receipt of demand notice on 8/10/2003.

4. The issue of limitation is a mixed question of fact and law and, therefore, at this stage, it will not be proper and appropriate to decide this issue. It is open for petitioners to raise this issue in the Trial Court. Therefore, without expressing any opinion on merits on this issue, the Criminal Writ Petition is dismissed. The Trial Court, however, shall decide the issue after the evidence is led by both the parties. All the contentions are kept open.

V.M. KANADE, J.